

ABOLITION DOCUMENTS.

NUMBER TWO.

THE CONSTITUTION AGAINST SLAVERY. - U.S.

Speech of Hon. AMOS P. GRANGER, of New-York, in the House of Representatives, April 4, 1856, the House being in the Committee of the Whole on the state of the Union.

Mr. GRANGER said:

Mr. Chairman: I am aware, sir, that the subject of Slavery is one of the most vital importance that can come before you for discussion—one that brings with it the highest interest, the deepest feeling, and involves principles of the most sacred character. I approach it, sir, with great reluctance, and prompted to it only by the stern demands of duty—a duty that, were it not a duty, I would gladly avoid. I know, sir, that southern feeling is ardent, and on this subject, sometimes fiery. The North is slow and contemplative—passive and yielding; but there is a point beyond which it will not go. To that point, sir, it has arrived. The mighty difference between the North and the South requires a settlement, and it can be delayed no longer. It must be met and disposed of. Freedom and Slavery must meet face to face, and try titles. The question, I regret to say, assumes a sectional aspect. The North and the South are opposite parties. I would it were not so; but since it is, let us meet it like friends and fellow-citizens of this highly-favored commonwealth, guided strictly by the Constitution, and sustaining the Union in every emergency. The Constitution was made to protect Freedom or Slavery—one or the other—not both. There can be no compromise between them—no joint ownership. It is time one or the other had full possession. The Constitution was formed by the convention, and adopted by the people, to secure the inalienable rights of man. Slavery is incompatible with those rights. Slavery in the United States is unconstitutional and therefore unlawful. Slavery can have no legal existence in this country, without specific constitutional legislative enactment, creating or establishing it. Sir, there are none—there can be no such enactments.* That slavery can have

no legal existence without specific legislative enactments creating or establishing it, I assert, on the authority of the Supreme Court of the United States. In the case of *Prigg vs. Pennr.*, 16 Peters, the Court declared "that the state of slavery is a mere municipal regulation founded upon and limited to the verge of territorial law." Now, I assert, there is no such law; and I assert it on the authority of the father of the fugitive slave law, the honorable Senator from Virginia, [Mr. Mason.] When advocating the passage of that law, and discussing its provisions, the honorable Senator objected to trial by jury, on the ground that it would require proof that slavery is established by existing law; and, said he, "it is impossible to comply with the requisition, for no such law can be found." Now, sir, put that and that together, and the "illegality of slavery is seen at a glance."

Go back with me to colonial times, before we were independent and had a government of our own, and observe the landmarks that guide us on this subject from that time to this. Slavery then existed in England as it did in the colonies here. In 1772, Charles Stewart of Virginia was in England with James Somerset, his slave. The slave absconded and became a fugitive. He was pursued and re-captured, and confined on board a ship to be transported to the West-Indies and sold. From his prison he found means to reach the ear of Mansfield, Lord Chief Justice of England, and obtained a writ of *habeas corpus*, and claimed his freedom. The parties appeared and took issue. The Chief Justice gave sentence as follows:

"The state of slavery is of such a nature that it is incapable of being introduced on any reason, moral or political, but only positive law. It is so odious that nothing can be suffered to support it but positive law. Whatever inconvenience, therefore, may follow from a decision, I can not say this case is allowed or approved by the law of England; and the black must be discharged."

That decision, sir, was never controverted, and remains, from that day to this,

* See Appendix, note A.

the law of England. It covered the colonies, and condemned slavery here as well as there. Four years after, in 1776, this country declared its independence, and assumed to speak for itself.

The Continental Congress—the most august body of men that ever met—by legal enactment sustained the decision of the Chief Justice; and calling God to witness, declared liberty inalienable, and bondage impossible, in these United States. In that immortal instrument, the Declaration of Independence, in language too specific and positive to be misunderstood, they declared liberty sacred; and to maintain it, pledged their lives, their fortunes, and their sacred honor. This was the first great organic law, and has never been repealed. The people indorsed the declaration, and sealed it with the blood of an eight years' war. Sir, it has become the political liturgy of the country; and since the 4th of July, 1776, it has been rehearsed annually in the presence of all the people. In 1778, the Articles of Confederation were agreed to, the constitution under which this government was administered till 1789. Most of the States then held slaves; yet, so universal was the sentiment that slavery was temporary and soon to expire, that in the Articles of Confederation not the slightest allusion was made to it. And here, sir, I ask you to note that, when the United States Constitution was adopted, every one of the old thirteen States had constitutions except Rhode-Island and Connecticut, and not one of those constitutions established or recognized slavery. Rhode-Island and Connecticut continued on under their old royal charters, neither of which, in the slightest degree, encouraged slavery. Up to this time, sir, there had been no rightful authority, or legal foothold, for slavery in this country.

Slavery was first introduced here without law—by a crime the law declares piracy. Without law it has been tolerated—permitted to remain, until it has attained such a degree of strength and arrogance that it presumes to come here, in this temple of Liberty, and par rank with Freedom. We have now arrived to the date of our present Constitution; and unworthy be the ingrate who will not maintain it to the last extremity. And now, sir, comes the question: Did the Constitution create or establish slavery? Sir, examine the entire document, and mark its general scope, object, spirit, and bearing—nay, its very letter, and let it decide whether Freedom or Slavery shall bear sway in this Republic.

The Constitution, article one, section nine, on the one hand, says: "No title of nobility shall be granted;" on the other, in the same section: "No bill of attainder shall be passed." Not content with that, it reads, (section ten:) "No State shall pass any bill of attainder." We had revolted from a monarchy where privileged orders prevailed; hence the framers of the Constitution determined to bar the door against them. Sir, a law to create or legalize slavery, either by Congress or any State, would be to pass a bill of attainder, and, therefore, as null and void as would be a bill to grant a title of nobility.

Sir, to grant a "title of nobility," or to elevate a class or family by law above the level, was an idea never for a moment entertained by the framers of the Constitution. And, sir, a proposition to enslave, degrade, and chattelize one class of persons for the avarice or pleasure of another, and to attain the blood and send it cursed with hereditary taint through succeeding generations, would have been repelled with indignation. Here, sir, is a direct and positive prohibition of slavery, and cuts it up root and branch. In the same tenth section it is also written: "No State shall pass any bill impairing the obligation of contracts." Now, that slavery not only impairs the obligation of contracts by wholesale, but actually deprives a large class of persons of the power of making contracts at all, and declares such contracts as they may make null and void—here again slavery meets a repulse, and is driven from the Constitution. Again, article one, section nine: "The privilege of the writ of habeas corpus shall not be suspended in time of peace;" the fugitive slave law to the contrary notwithstanding. Now, sir, what is this writ of habeas corpus, the privilege of which shall not be suspended? Says Blackstone:

"The object of the writ is to bring the body of the prisoner who has been restrained of liberty into court, who shall determine whether the cause of his commitment be just, and thereupon do as justice shall appertain. It is to be directed to the person detaining another, and demanding him to produce the body of the prisoner, with the day and cause of his capture and detention, to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf."

It is for the special protection of personal, individual liberty, a right to the privilege of which all are entitled who claim they are deprived of it without due process of law. All, without discrimina-

tion of caste or color; all, male and female, citizen and alien. It is the body-guard of personal, individual liberty, in this country. Sir, the hand that is raised against it aims a blow at the heart of Liberty itself. This the fugitive slave law has done. Here again slavery finds in the Constitution a successful rival, and is forced to yield. Sir, this potent privilege of the writ of habeas corpus, this all-powerful protector of individual personal liberty must be suspended, or slavery can be no longer tolerated. Sir, there is not a slave in this Union who is not entitled to the privilege of this writ, and not one who, with a fair and impartial trial under it, would not, like Sommerset, obtain his freedom.

"This writ," says Blackstone's commentator, "makes slavery impossible in England."

I say, sir, this writ makes slavery impossible in America. If he could say thus much of it in a monarchy, may I not say as much of it in a republic? Sir, the writ of habeas corpus and slavery can not exist together. They can not breathe the same atmosphere. One or the other must perish.

Again, sir, at article 4, section 4, the Constitution reads as follows:

"The United States shall guarantee to every State in this Union a republican form of government."

A State constitution that expressly authorizes slavery, and legalizes an institution that allows one man to enslave another—that chattelizes human beings, and makes them marketable like horses and swine—that a man has no right to his wife, his children, nay, does not own himself, but can be sold on execution, and made to follow like a dog and obey his master—a constitution like that has, in my view, very little claim to a republican character. Perhaps I may be called on to vote for the admission of a State with such a constitution. When I vote for it, sir, I give due notice it will be after this.

If there still remains a doubt how the Constitution should be understood on this subject, ask it. Ask it, sir, and it will tell you. It gives no uncertain sound. Listen, sir, and hear its own explanation:

"We, the people of the United States, in order to form a more perfect Union, to establish justice, to insure domestic tranquillity, provide for the common defense, protect the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain this Constitution for the United States of America."

Here, sir, you are expressly told by the Constitution itself, that it has liberty, not slavery, for its object. Sir, this is language that can not be trifled with. And lest there might be some that hesitate, and perhaps claim that the Constitution was made not for freedom but for slavery, a codicil was subsequently added, explaining, qualifying, overruling, nay, sir, annulling, every thing inconsistent with it in the original instrument. I will read it, sir, from the fifth article of amendments to the Constitution:

"No person shall be deprived of life, liberty, or property, without due process of law."

This, sir, goes back and covers the whole ground. No person—owing labor or not—no person shall be deprived of liberty without a fair trial for his offences. There it is, in letters of iron. It stands out in bold relief, the all-pervading sentiment of the Constitution. Sir, this alone, if there was nothing else in the Constitution to sustain it, settles the question and seals the death-warrant of Slavery. No State has power to save it, even within its own borders. No State rights, no State sovereignty, has power to protect it. And so declares the Constitution:

"No person shall be deprived of life, liberty, or property, without due process of law."

Sir, was ever language more emphatic? Was ever law more decisive? Article sixth sums up as follows:

"This Constitution, and laws of the United States which shall be made in pursuance thereof," etc., "shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

As against all these positive provisions of the Constitution in favor of liberty, and against slavery, the advocates of slavery present us with the second section, article fourth, which provides for the return of persons owing service or labor, and who have absconded and left the State. And it provides for nothing else. It reads as follows:

"No person held to service or labor in one State under the laws thereof, escaping to another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom service or labor may be due."

A person owing labor in one State and fleeing to another, shall not be discharged

from such labor by any law of the State to which he goes, but shall be given up—to whom? To the person to whom such labor *may* be due. And if that is not to be ascertained by a fair trial, by due process of law, then you may as well take one man as another. If you are not to ascertain by due process of law who the person is that owes labor, and to whom he owes it, then I say you may as well take one person as another. Mark, sir, color has nothing to do with it. So far as the question of slavery is concerned, this section is of very little consequence, one way or the other. That it means slaves I deny. It does not describe their condition. It can not mean slaves, for the framers of the Constitution objected to the word slave; and President Madison, the father of the Constitution, said: "It is wrong to admit into the Constitution the idea that there can be property in man;" and even the word "servitude" was, on motion of Mr. Randolph, of Virginia, unanimously rejected, and the word service inserted. Sir, let Virginia and the whole country hear and heed the reason given for this unanimous vote; the reason given, sir, was—"because the former was thought to express the condition of slaves and the latter the obligation of freemen."

The idea that it meant slaves is repudiated by the very terms of the section; for it says, "persons owing service or labor." Sir, if you are to transform a person owing service or labor into a slave, you must look elsewhere for a license to do it. Now, a slave, a chattel, no one will contend is indebted or owes anybody labor or any thing else. That is impossible. A slave is incapable of making any contract whatever. The slave you catch under that clause is just no slave at all. It is some person owing labor and gone out of the State to get rid of the debt. In defiance of at least three positive provisions of the Constitution, the fugitive slave law grabs somebody, black or white—for it makes no distinction of color—demands of him a life's labor, suspends "the privilege of the writ of *habeas corpus*," denies him "trial by jury," and "deprives him of liberty without due process of law," and works him, or whips him, or sells him, as it likes.

There is one other clause in the Constitution, referred to by the advocates of slavery as favoring their views:

"ART. 1. SEC. 2.—Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole num-

ber of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

It is claimed that the three fifths of all other persons means slaves. Then why not say so? But suppose it does, it was merely a compromise with Slavery, in which, like all other compromises with Slavery, Freedom gets cheated. With an understanding that the public burdens would be borne, or taxes paid, by the slave States in proportion to their representation in Congress, the slave States obtained, and now possess, the unfair advantage of some twenty-one members of Congress, and an equal number of presidential electors more than a fair share, while they have long since ceased to furnish a dollar in consideration of the arrangement. Thus the slave States have a controlling property representation in Congress with which they continually invade the soil of freedom, while the free States have no such property representation to resist the invasion. Besides, sir, by a property representation which the free States do not enjoy, the slave States meet us at every presidential election with some twenty-one extra electoral votes, and for all which they pay not a farthing of the stipulated consideration. Sir, by this fraud the free States are, to a great extent, disfranchised. The property representation of the slave States not enjoyed by the North is equal to some eighteen hundred thousand votes, or in effect disfranchising some eighteen hundred thousand northern freemen—more than five times the number of all the slaveholders put together.

Sir, five slaveholders, with each one thousand slaves, have more power in Congress, and at every presidential election, than three thousand northern freemen. And now we are coolly asked to remain quiet and submit to have this unfair advantage over us not only perpetuated, but to have it multiplied, and increased, and extended to an indefinite extent. Sir, I ask, with all due respect, is not this a little too much?

Now, sir, for section ninth of the Constitution. Here again Slavery seeks shelter:

"SEC. 9, ART. 1.—The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited prior to 1808."

This is claimed by some to be a recogni-

* See Appendix, Note B.

tion of the slave trade. If it was, it was a recognition with a vengeance. It was to put an end to it. And here, sir, allow me to quote as authority a rule of interpretation of the United States Supreme Court:

"When rights are infringed, when fundamental principles are overthrown, when the general system of laws are departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such an object."

"When rights are infringed," the legislative intention must be expressed with irresistible clearness.

Sir, will any one pretend that the Constitution expresses "with irresistible clearness" that one man is allowed to infringe on the rights of another so far as to deprive him of his liberty—to take possession of his wife and children, and make them subservient to his will—to sell them to a returnless distance from their native home, and from each other, and pocket the money? God forbid that the Constitution of my country should harbor such a sentiment!

Sir, you are not to rely on doubtful passages of law; you are not to infer or guess when the dearest rights of man—when liberty itself, is sought to be overthrown. Nothing short of positive declarations, expressed "with irresistible clearness," can give slavery the slightest foothold in the Constitution.

And here, sir, in the presence of this House and the country, I take occasion to say, that the Constitution nowhere gives Congress power to legislate for the return of fugitive slaves. Sir, I demand that the power be pointed out "with irresistible clearness," or the claim to it be abandoned for ever. Sir, all attempts to sustain slavery in the Constitution take for granted the legality of slavery when the Constitution was formed. Without this assumption no such claim would ever have been set up. But, as this assumption is untrue, the whole fabric of slavery in the Constitution falls to the ground. Sir, if this glorious republican Constitution of this glorious land of liberty, the asylum of the oppressed, this home of the brave, and this land of the free, takes sides with slavery, then I confess I do not understand it. Sir, the Constitution, both in

spirit and express terms, repudiates slavery, and positively bars its existence. Slavery is war, open war, on the rights of man. It is death to rights inalienable. Its very name was offensive to the convention that formed the Constitution, and was denied a record. Slavery in the Constitution! Sir, it would be like ingrafting wormwood into the tree of liberty!

APPENDIX.

THE Publishing Committee of the American Abolition Society, in re-publishing the very able and lucid speech of Mr. Granger, think it proper to append a note or two, in further explanation of their own position.

NOTE A, Page 1.

The Society holds that slavery, being criminal in its own nature, can not possibly be legalized by any constitutional provision or legislative enactment, or by any conceivable process whatever. This is abundantly affirmed by the most eminent writers on common law. All the standard definitions of law are such as to preclude the possibility of legalized slavery. It would require a separate "document" to present a condensed abstract of the proofs of this position with which our English and American law literature abounds. Our own national declaration of inalienable rights, so pertinently quoted by Mr. Granger, was, in fact, but the echo of the sentiments of eminent jurists and civilians, in all nations and ages. (See "Letters on Slavery," etc., by O. S. Freeman.)

NOTE B, Page 4.

The apportionment clause, like all the other clauses claimed by the slaveholders, can not, *legally*, be applied to slaves, for the reason (subsequently suggested by Mr. Granger) that when the Constitution was formed, there was, *legally*, no such "institution" as slavery in this land. So that no constitutional provisions of this character could, *legally*, be applied to slavery, which had no legal existence. And the same fact still remains. It has been supposed that the phrase "all other persons," in this clause, *must* mean slaves, because it is put in opposition to "free persons." But this is an error. The term "free persons," in a civil and legal sense, means persons possessed of the privileges of citizenship, "free denizens," "free citizens," or "freemen" enjoying franchises, in distinction from *aliens*. So that the phrase "all other persons," means *ALIENS*. This use of the term "free persons," is in strict accordance with its use in the public documents of the mother country, the colonies, and the States, up to the time when the Constitution was formed. Any one who doubts this will do well to consult "Spooner's Unconstitutionality of Slavery," in which this exposition is so strongly fortified, that no sound lawyer will be likely to attempt to impugn it.

CONSTITUTION OF THE AMERICAN ABOLITION SOCIETY

ART. I. This Society shall be called the American Abolition Society.

ART. II. Its object shall be to secure the immediate and unconditional abolition of Slavery.

ART. III. Its leading sentiments are these:

1. Slaveholding is sinful, illegal, and unconstitutional. It has no right to be in Church or in the State. It is to be excluded from the former as a sin, and prohibited by the latter as a crime. It is not sanctioned by the Bible or the Constitution, but is condemned by both.

2. It is the duty of the Federal Government, in all its departments, to suppress slaveholding throughout the United States.

3. It is the duty of the several State Governments to sustain the Federal Government in this measure, to protect their citizens, and all who touch their soil, from seizure by kidnappers or slaveholders, under the Fugitive Slave Bill or otherwise; to make all attempts at the execution of that unconstitutional and atrocious Act a penal offence; and to extend the right of suffrage and eligibility to office to all their citizens, irrespective of race or complexion.

4. It is the duty of our citizens, at the ballot-box, to provide State and National administrations that will make these measures paramount objects of their activity; to secure a judiciary that will execute justice; to vote for such candidates for office, and for such only, as are tried friends of the enslaved, and publicly known to be earnestly engaged in promoting these measures.

5. It is the duty of Christians to hold no church relations that involve religious fellowship or ecclesiastical connection with slaveholders. It is also their duty to sustain no Missionary Society having complicity with slaveholding, nor any Tract Society, or other religious publishing Society, that does not expose and rebuke the heinous sin of slaveholding, in common with other sins.

ART. IV. The action of the Society will be directed to the furtherance of its objects, the propagation of its principles, the advocacy and promotion of its proposed public measures in all suitable ways; particularly by personal example, and by

the publication and circulation of cheap tracts, the employment of lecturers, and assisting to sustain a periodical adapted to these purposes.

ART. V. Any person approving these objects, principles, and measures, and pledged to their support, by effort and example, may become a member of this Society, by assenting to its Constitution, and contributing to its funds.

ART. VI. The Officers of this Society shall be a President, Vice-Presidents, Secretary and Treasurer, who, together with others, shall constitute an Executive Committee, five of whom shall constitute a quorum for the transaction of business.

ART. VII. The annual meeting of the Society, for election of officers and transaction of other appropriate business, shall be held at such time and place as the Executive Committee shall direct.

ART. VIII. No amendment shall be made in this Constitution without the concurrence of two thirds of the members present at a regular annual meeting, nor unless the proposed amendment has been submitted to a previous meeting, or to the Executive Committee in season to be published by them, (as it shall be their duty to do, if so submitted,) at the regular official notification of the meeting.

ART. IX. The Executive Committee shall be authorized to fill any vacancy which may occur in the Board of Officers.

Officers of the Society.

President: Gerrit Smith, of New-York.

Vice-Presidents: Lewis Tappan, of New-York; Samuel McFarland, of Pa.; A. B. Burdick, of R. I.; and J. W. North, of Minnesota.

Treasurer: Arthur Tappan, of New-York.

Cor. Secretary: William Goodell of New-York.

Executive Committee: Dr. James McCune Smith, S. S. Jocelyn, J. R. Barbour, George Whipple, Dr. Thomas Ritter, of New York City; Samuel Wilde, Kings Co., N. Y.; H. D. Sharpe, do.; W. E. Whiting, do.; Frederick Douglass, Rochester, N. Y.; Elnathan Davis, Fitchburg, Mass.; Abram Pryne, Syracuse, N. Y.; Isaac T. Hutchins, Ct.